IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.1 OF 2004
WITH
WRIT PETITION NO.4829 OF 2002
WITH
CIVIL APPLICATION NO.2381 OF 2003
WITH
CIVIL APPLICATION NO.2382 OF 2003
WITH
CIVIL APPLICATION NO.2159 OF 2005
WITH
CIVIL APPLICATION NO.2615 OF 2005

Vijay Ramakant Shah & Ors. ...Petitioners

Versus

Daman Municipal Counsel & Ors. ...Respondents

.....

Mr.C.M.Kothari for Petitioners.

Mr.R.V.Govilkar for Respondents 1 and 2.

Mr.Balkrishna Joshi for Respondent No.3.

WITH

CIVIL APPLICATION NO.2124 OF 2005
IN
WRIT PETITION NO.4829 OF 2002

Daman Municipal Council & Ors. ...Applicants

Versus

Vijay Ramakant Shah & Ors. ...Respondents

.....

Mr.R.V.Govilkar for Applicants 1 & 2.

Mr.Balkrishna Joshi for Applicant No.3.

Mr.C.M.Kothari for Respondents.

CORAM: A.M.KHANWILKAR, J.

APRIL 26, 2006.

P.C.

1. Heard Counsel for the parties. Perused the pleadings.

2. In this Petition, the first grievance is regarding non-compliance of the assurance given before this Court as recorded in order dated 4th October 2002, whereby, the Corporation informed this Court that the vendors will be allowed to sell vegetables in the market up to 9.00 p.m. In the Petition, it is alleged that inspite of this assurance given, the Officers of the Corporation seized the goods belonging to the Petitioners and removed the Petitioners from the market place. Insofar as this allegation is concerned, in the reply affidavit filed before this Court on behalf of the Corporation it is stated as follows:

> "23. As regards paragraph 19, it is denied that allegedly inspite of the knowledge of assurance given by the

respondents advocate and oral direction given by the court the respondents acted in utter breach of the assurance and utter disregard of the Court's order forced the petitioners to stop their business on 21.10.2003 or on any other day. There was no oral or any other direction from this Hon'ble Court as is alleged and neither the Petitioners nor any one of them was ever forced either on 21.10.2003 or on any other day to stop the business.

Shri Vijay R.Shah the petitioner no.1 occupies an area of 15.75 sq.meters which is more than seven times the area of 1.5 sq.meters. He is therefore liable to pay Rs.52=50 per day and not only Rs.5/-. On failure of the stallage tax, the goods/materials were seized and Panchnama was drawn as per the provisions of Daman and Diu Municipalities (Amendment) Regulation, 1994."

3. The explanation offered by the Respondents with regard to the allegations contained in Para 19 appear to be plausible explanation and not a case of wilful disobedience of the assurance given to this Court.

4. The second allegation which is pressed into service by the Counsel for the Petitioners is with reference to the assertions made in Para 21 of the Petition. It is stated that the market was locked by the Respondents on 21st October 2002 and the same was kept locked for more than two weeks,

thereby depriving the Petitioners from conducting their business. Insofar as this allegation is concerned, the reply filed on behalf of the Respondents asserts as follows :

> "25. As regards paragraph 21, it is denied that the market was locked after 21.10.2003 and no petitioners were allowed to sell their vegetables. The factual position being that the market was closed only for the period from 9.00 p.m. w.e.f. 22.10.2003 to 6.00 a.m. of 22.10.2003. When the petitioners approached the Authorities, all that they were told that they were liable to pay as per the rates prevailing from 1.4.1998 and cannot insist on making payment of Rs.5/- only irrespective of the area occupied by each of them.
>
> The respondent received letter dated 30.10.2003 which was replied on 31.10.2003. A copy of the resolution passed by the Council in the meeting dated 21.10.2003 was also furnished along with the same. It is therefore incorrect to allege that the documents were not supplied. it is submitted that there is a sufficient and proper compliance to the request/demand."

5. It is obvious that the case made out by the Respondents is that the market was locked only after 9.00 p.m. till 6.00 a.m. which is non-working time for the market. Indeed, the Petitioners have filed affidavit of Mr.Vijay

Ramakant Shah to assert that the gate was locked even during day time which can be demonstrated from the photographs taken by the Petitioners. The photographs are produced before the Court. However, the same is not accompanied by the affidavit of the concerned photographer to corroborate the position that the photographs were taken on 29th October 2003 during day time as alleged. Besides, Counsel for the Respondents disputes the position that such photographs have been made available to him so far.

6. Be that as it may, the allegation that the market was kept locked after 21st October 2003 continuously for a period of more than two weeks is not substantiated by the Petitioners. There is no reason to doubt the correctness of the stand taken by the Respondents stated on affidavit, which is extracted in the earlier part of this order.

7. The third allegation which is pressed into service at the time of argument is that the Petitioners were required to approach this Court by way of Civil Application No.2381 of 2003 on which,

this Court on 12th November 2003 issued following

directions :

> "Both these Civil Applications are adjourned for two weeks to enable the respondent's counsel to file affidavit in reply to the Civil Applications. In the meantime Daman Municipal Council should permit the Petitioners to vend the vegetables in the area presently in their occupation subject to conditions mentioned in the order of 4.10.2002.
>
> Parties to act on copy of this order duly authenticated."

8. The relevant direction to the Corporation was to permit the Petitioners to sell the vegetables in the area presently in their occupation, subject to conditions mentioned in the earlier orders. The grievance in the Petition as can be discerned from Para 25 of the Petition is as follows:

> "The Petitioners state that the Respondents instead of complying with the Court's order, dated 12.11.2003 started dismantling the vegetable stalls in the vegetable market and removed the Petitioners' articles and vegetables etc. The Petitioners protested this action and brought to the notice of the Respondents that their conduct is in utter disregard and in breach of the Court's order dated

3.11. 2003 but in vain. The Petitioners submit that this is clear act of the contempt of the court by the respondents with knowledge."

9. This assertion has been countered by the Respondents in Para 28 of the reply affidavit denying the case made out by the Petitioners in the following terms:

"28. As regards paragraph 25, it is denied that any vegetable stalls were dismantled and the articles and vegetables belonging to the petitioners were removed. Firstly there are no vegetable stalls in the market, therefore there is no question of dismantling any stall. As regards the removal of vegetables and articles, since no one is allowed to keep any articles or vegetables beyond 9 p.m. there was no question of petitioners articles if found not to be removed and that too by non complying with the orders of this Hon'ble Court dated 12.11.2003. The petitioners were permitted to sell their vegetables etc. in the market and as stated above since there are no stalls and there is only a provision of keeping the goods for a day as all the sides to open. the Petitioners deliberately kept handcarts and wooden bodes illegally and it is not permissible as it obstructs the traffic of the market. The illegal, deliberate and intentional keeping of handcarts wooden boxes etc. which are not permissible and kept in the market campus were removed. The allegation that removal of the handcarts and boxes of some of the vendors after 9.00 p.m. being allegedly in non-compliance of the orders dated 12.11.2003 of this Hon'ble Court is

incorrect and therefore denied. There is no breach of the order dated 12.11.2003 by the act of removal of some handcarts and boxes after 9.00 p.m. in the night."

10. From this reply affidavit, it is seen that Petitioners were permitted to sell their vegetables in market. The fact that there were standing stalls in the market place has been denied in the reply affidavit. It is asserted by the Respondents that there was only provision of keeping the goods for a day, as all the sides are open. The Respondents have also brought on record illegal acts of the Petitioners in this affidavit. No rejoinder has been filed to counter the said position.

11. Suffice it to observe that all the aforesaid allegations made in the Petition which were pressed into service to initiate contempt action against the Respondents have been satisfactorily explained by the Respondents and it is not a case of wilful disobedience of the order of the Court. Viewed in this perspective, this Petition should fail. The same is dismissed.

12. The concerned Respondents are present in Court. At the outset they have tendered unconditional apology, however, as mentioned earlier, the justification given by the Respondents on affidavit being satisfactory explanation, the question of accepting unconditional apology does not arise. Notice issued to Respondents stands discharged.

A.M.KHANWILKAR, J.